

Federal Communications Commission

DA 02-2721

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)
)
Amendment of Section 73.202(b),) MB Docket No. 02-335
Table of Allotments,) RM-10545
FM Broadcast Stations.)
(Hart, Pentwater and)
Coopersville, Michigan))

NOTICE OF PROPOSED **RULE** MAKINGAdopted: October **23, 2002**Released: November **8, 2002**Comment Date: December **30, 2002**Reply Date: January **15, 2003**

By the Assistant Chief, Audio Division:

1. Before the Commission for consideration is a Petition for Rule Making filed by Waters Broadcasting Corporation and Synergy Media, Inc. ("Petitioners") proposing the substitution of Channel 287B for Channel 287C2, reallocation of Channel 287B from Hart, Michigan to Coopersville, Michigan, and modification of the license for ~~Station~~ WCXT accordingly. Petitioners also request the reallocation of Channel 231C3 from Pentwater, Michigan to Hart, Michigan to maintain the community's sole ~~local~~ aural transmission service with the license for Station WWKR modified accordingly. Petitioners indicate they will file applications for Channel 287B at Coopersville and Channel 231C3 at Hart.'

2. Petitioners filed the petition pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.' In support of the proposal, Petitioners state that Channel 287B may be allotted to Coopersville consistent with the Commission's separation requirements. Further, allotting Channel 287B to Coopersville would provide a first local service to the community and permit a significant improvement of the facilities of Station WCXT. Operating at its specified site, Station WCXT will provide primary service to a population of 1,116,129 people in an area 12,491.3 square kilometers. The gain area has a population of 930,977 people. The area that will lose service from Station WCXT has a population of 30,544 people and is served by five or more other aural services. The proposed Coopersville allotment would provide a **first local aural transmission service** to Coopersville and thus advances the Commission's third allotment priority.' Petitioners acknowledge,

¹ Waters Broadcasting Corporation is the licensee of Station WCXT, Hart, Michigan. Synergy Media, Inc. is the licensee of Station WWKR. Pentwater, Michigan.

² See *Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O")* 4 FCC Rcd 4870 (1989), *recon. granted in part* ("Change of Community R&O"), 5 FCC Rcd 7094 (1990).

³ The allotment priorities are: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3).] See *Second Report*

however, that the proposal also would result in the removal of the sole local operating service from Hart. In support of this removal and to ensure continued local service at Hart, Petitioners have proposed the reallocation of Station WCXT, Channel 231C3 from Pentwater to Hart, with Pentwater continuing to receive local service from Station WMOM, Channel 274A. In further support of the request, Petitioners state that Coopersville is a community for allotment purposes. Coopersville is an incorporated community with a population of 3,910 people according to the 2000 U.S. Census. Petitioners state that Coopersville is located outside of any Census Bureau designated Urbanized Area and that the 70 dBu contour of the proposed station will cover only 42.8 percent of the Muskegon Urbanized Area!

3. We believe that Petitioners' proposal warrants consideration since the reallocation of Channel 287B from Hart, Michigan, to Coopersville, Michigan, could provide a first local service to the community of Hart. Channel 287B can be allotted to Coopersville, Michigan, in compliance with the minimum distance separation requirements at Petitioner's specified site.' As requested, we shall propose to modify the license for Station WCXT to specify operation on Channel 287B at Coopersville, Michigan, and in accordance with the provisions of Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 287B at Coopersville. We shall also propose the reallocation of Channel 231C3 from Pentwater, Michigan, to ~~Hart~~, Michigan, and modification of the license for Station WWKR to reflect operation at Hart. Channel 231C3 can be allotted to Hart in compliance with the Commission's spacing requirements at its current site.⁶ We shall propose the modification of the license for Station WWKR to specify operation at Hart and in accordance with Section 1.420(i) of the Commission's Rules will not accept competing expressions of interest in the use of Channel 231C3 at Hart. Since Coopersville and Hart are located within 320 kilometers of the U.S.-Canadian border, concurrence of the Canadian Government will be required for the allotment of Channel 287B at Coopersville and Channel 231C3 at Hart. Additionally, in order to insure continued service to Hart, we will withhold program test authority with respect to the reallocation of Channel 287B from Hart to Coopersville until the activation of Channel 231C3 at Hart. Should Petitioners' proposal be granted, no special temporary authority will be considered for Station WCXT moving from Hart to Coopersville, if Station WWKR fails to implement its relocation from Pentwater to Hart in a timely fashion.'

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

and Order in BC Docket 80-130, ("Revision of FM Assignment Policies and Procedures"). **90 FCC 2d 88, 91 (1982).**

⁴ Although not required, Petitioners provided a showing with respect to the criteria listed in **Faye and Richard Tuck, 3 FCC Rcd 5374 (1988)**, showing that Coopersville is an independent community. A Commission engineering analysis shows that Channel 287B at Coopersville will cover 34% of the Muskegon Urbanized Area.

⁵ The coordinates for Channel 287B at Coopersville are 43-20-36 and 85-52-16.

⁶ The coordinates for Channel 231C3 at Hart are 43-51-33 and 86-18-27

⁷ See **Report & Order. Streamlining of Mass Media Applications. MM Docket No. 9843, 13 FCC Rcd 23056 (1998).**

| Community | Channel No. | |
|------------------------|-------------------|------------|
| | Present | Proposed |
| Coopersville, Michigan | --- | 287B |
| Hart, Michigan | 287C2 | 231C3 |
| Pentwater, Michigan | 231C3, 274A, 280A | 274A, 280A |

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before December 30, 2002, and reply comments on or before January 15, 2003, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW. TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the Petitioners' counsel, as follows:

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7. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc. will receive handdelivered or messengerdelivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 2002. The filing hours at this location are 8:00 a.m. to 7:00 a.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.⁸

⁸ See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Makings to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding contact Kathleen Scheuerle, Media **Bureau**, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted ~~from~~ the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. *An ex parte* presentation is not prohibited if specifically **requested** by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service **requirement**. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. **Any** reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John **A. Karousos**
Assistant Chief, Audio Division
Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments. Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal communications Commission, Washington, D. C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available **for** examination **by** interested parties during regular business **hours** in the FCC Reference Information Center at its headquarters, Washington, D. C.